

CEC, Inc. and International Union of Elevator Constructors, AFL-CIO. Case 17-CA-20850

May 13, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND BARTLETT

On August 10, 2001, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed limited exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, CEC, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

¹ No exceptions were filed to the judge's finding that the requested information was relevant to the Union's inquiry into the relationship between the Respondent and Access.

² The Board does not pass on the judge's conclusion that the parties' contract demonstrates that the information requested by the Union was presumptively relevant.

³ We shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

WE WILL NOT refuse to bargain collectively with the International Union of Elevator Constructors, AFL-CIO, by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its functions as the exclusive bargaining representative of employees in the appropriate unit. The unit is:

All elevator constructor mechanics and elevator helpers employed by Respondent engaged in the installation, repair, modernization, maintenance and servicing of all equipment referred to in Article IV and Article IV (A) of the collective-bargaining agreement between the Union and the National Elevator Industry that is in effect from July 9, 1997 to July 8, 2002.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly furnish the Union with the information it requested on August 14, 2000.

CEC, INC.

Stanley D. Williams, Esq., for the General Counsel.

John D. Meyer, Esq., for the Respondent.

Robert P. Curley, Esq., for the Charging Party Union.

DECISION¹

ALBERT A. METZ, Administrative Law Judge. This case involves issues of whether the Respondent has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by refusing to supply the Union with certain requested information.² On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the parties' briefs, I make the following findings of fact.

I. JURISDICTION AND LABOR ORGANIZATION

The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Charging Party Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

The Respondent, CEC, Inc., is engaged in the elevator construction business. It is owned and operated by officers and directors, Charles Buscher and Ron Anglim. The Union and the Respondent have had a collective-bargaining relationship for many years. They are currently parties to a "short form" collective-bargaining agreement that was signed on August 22, 1997, and expires on July 8, 2002. That agreement binds the Respondent to the industry nationwide standard agreement negotiated between the International Union of Elevator Constructors (IUEC) and the National Elevator Industry, Inc., a multiem-

¹ This case was heard at Omaha, Nebraska, on May 22, 2001.

² 29 U.S.C. § 158(a)(1) and (5).

ployer bargaining association. The 1997–2002 standard agreement details the broad work jurisdiction covered by the contract.

The Respondent also signed a “Voluntary Recognition Agreement” that provided (GC Exh. 2):

“The Union claims and the Employer acknowledges and agrees that a majority of its Elevator Constructor Mechanics and Elevator Constructor Helpers (hereinafter referred to as “Mechanics” and “Helpers”) have authorized the Union to represent them in collective bargaining.

The Employer does hereby recognize the Union, agents or representatives, as the exclusive collective-bargaining agent for all Mechanics and Helpers in the employ of the Employer engaged in the installation, repair, maintenance, and servicing of all equipment and other work referred to in Article IV and Article IV(A) of the current Standard Agreement between the Union and the National Elevator Industry, Inc. (NEII) on all present and future jobsites.

The Respondent, CEC, Inc., originally operated under the name Continental Elevator Company, Inc. (Continental). On February 12, 1999, Continental sold the assets of its business to Otis Elevator Company (Otis). The Respondent remained in business but changed its name to CEC, Inc. in March 1999.

Most of the Respondent’s employees went to work for Otis after the asset sale. Three employees remain on the Respondent’s payroll. These individuals are relatives of Anglim or Buscher. Greg Anglim and Ryan Anglim are Ron Anglim’s sons. Bernard Buscher is Charles Buscher’s brother. Each of these employees is an active, dues paying member of the Union and they continue to perform work under the collective-bargaining agreement.

Anglim and Buscher also own and operate another corporation, Access Elevator, Inc. (Access). Access was formed in 1979 and was incorporated in 1985. Access operates from the same office as the Respondent. Anglim and Buscher are officers and directors of that corporation. The articles of incorporation state that part of the purpose of the corporation is to, “Manufacture, sell, install, service, repair, develop and design elevators and lift-relating equipment.”

III. THE UNION’S INFORMATION REQUEST

The short form agreement collective-bargaining agreement between the parties contains a work-preservation clause:

10. In order to protect and preserve, for the employees covered by this Agreement, all work heretofore performed by them, and in order to prevent any device or subterfuge to avoid the protection and preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any on-site work of the type covered by this Agreement, under its own name or under the name of another, as a Corporation, Company, Partnership, or any other business entity, including a joint venture, wherein the Employer, through its officers, directors, partners, or stockholders, exercises either directly or indirectly, management control, or majority ownership, the terms and

conditions of this Agreement shall be applicable to all such work.

The Union was aware of the existence of Access, a nonunion, elevator business. In approximately 1999, the Union sought to get Access to sign a union agreement but it declined to grant recognition to the Union.

The Union became suspicious that Anglim and Buscher were using Respondent’s employees to perform Access’ work that is covered by the collective-bargaining agreement. Representative Earl Baker began investigating the matter and learned that Respondent’s employees performed work at Access jobsites. These projects included work at the German American home, St. Matthew’s Church, and American Legion. Records of the Iowa Division of Labor also revealed that employee Bernie Buscher had performed elevator safety tests on at least two occasions for Access Elevator. Additionally, the Union received reports from its representative in Denver, Colorado, that Access was working in that area.

In October 1998, during the course of a computer check of elevator businesses, the Union found that the Respondent and Access were operating from the same Omaha, Nebraska business address. The Union followed this information up by obtaining both Companies’ articles of incorporation. These documents confirmed that both corporations had identical officers and directors.

Based on this information Union Representative William Stanley drafted an information request for transmission to the Respondent. He testified that the request was designed to reveal information that would assist the Union in discovering if any connection between the Respondent and Access presented issues of single employer or alter ego.

The information request contained 79 different requests for information. The questionnaire asks about four major aspects of Respondent and Access Elevator’s operations: (1) operations; (2) management; (3) labor relations, and (4) ownership. The “operations section” asks for information regarding common location (questions 1 through 5); common business records (questions 6 through 13); business identification numbers (questions 14 through 17); common finances (questions 19 through 21); common transactions (questions 22 through 32); common services (questions 33 through 34); common customer business (questions 35 through 50) and employee interchange (questions 51 through 58). The “management section” asked for information regarding supervisory interchange (questions 59 through 62) and managerial interchange (questions 63 through 66). The “labor relations section” requested information regarding common labor relation’s policy (questions 67 through 69); common policy setter (question 70); common representative (questions 71 and 72) and common employer associations (questions 73 and 74). The “ownerships section” requested information about the identification of officers and stockholders of the two corporations (questions 75 through 79).

On August 14, 2000, the Union left a copy of the request at the offices maintained by the Respondent and Access in Omaha, Nebraska. On August 29, 2000, Respondent’s counsel, Thomas B. Fiddler, replied to the Union’s information request. The letter acknowledged Stanley’s “goal of [seeking] to ascer-

tain whether CEC, Inc. is operating a non-union company, namely Access, in violation of the Collective Bargaining Agreement." Fiddler's letter notes that Access has been operating since 1979 with the full knowledge of the Union and is a separate entity from the Respondent. He states that the Respondent, "declines to answer your questions," and the "Union's request for confidential information is . . . improper."

IV. ANALYSIS

A. The Information Request

It is well settled that an employer, on request, must provide a Union with information that is relevant to carrying out its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). This duty to provide information includes information relevant to negotiations and contract administration. *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987); *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). Where, as here, the information sought concerns matters outside the bargaining unit, such as those related to single employer or alter ego status, a union bears the burden of establishing the relevance of the requested information. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Duquesne Light Co.*, 306 NLRB 1042 (1992). A union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988).

The Board uses a broad, discovery-type standard in determining relevance in information requests, including those for which a special demonstration of relevance is needed. Potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Reiss Viking*, supra; *Children's Hospital of San Francisco*, 312 NLRB 920, 930 (1993); *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985). In this regard, the Board does not pass on the merits of a union's claim of breach of a collective-bargaining agreement in determining whether information relating to the processing of a grievance is relevant. *Reiss Viking*, supra; *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990).

The Union's suspicions leading it to seek the information were based upon a reasonable belief that the Respondent may be operating Access as a single employer or alter ego in violation of their collective-bargaining agreement. As the Board succinctly stated in *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987):

In cases when the employer, party to a collective-bargaining agreement, appears to be operating another company which might be so interrelated as to constitute a single employer or alter ego, the union party to that agreement is entitled to information from the employer about the nature of and relationship between the two operations which may be relevant and useful to the union representing the employees in negotiating terms and conditions of employment with the employer, or administering and enforcing the collective-bargaining agreement.

The Union was not required to show that the information that triggered its request was accurate or ultimately reliable, and a union's information request may be based on hearsay. *Magnet Coal, Inc.*, 307 NLRB 444 fn. 3 (1992). The Union was not required to accept the Respondent's response that Access was a totally separate operation and that it was wrongfully seeking "confidential information." The Union was entitled to conduct its own investigation and reach its own conclusions about the applicability of the collective-bargaining agreement to Access' operations. See *Reiss Viking*, supra.

The Union established that the Respondent was closely associated with Access through its common ownership, officers, and directors. The two Companies operated from the same offices doing business in the same industry. Respondent's employees apparently had done work for Access. This showing was sufficient objective evidence to support the Union's request for information about the interrelationship of Access and the Respondent. The information would aid the Union in its determining whether the parties' contract had been violated by the Respondent operating Access as an alter ego or single employer. In light of all the above, I conclude that the Union had a reasonable and objective factual basis for its information request.

Article 10 of the short form agreement that the Respondent signed with the Union applies the terms of the contract to:

any on-site work of the type covered by this Agreement, under its own name or under the name of another, as a Corporation, Company, Partnership, or any other business entity, including a joint venture, wherein the Employer, through its officers, directors, partners, or stockholders, exercises either directly or indirectly, management control, or majority ownership, the terms and conditions of this Agreement shall be applicable to all such work.

Article 10 thus is a very specific recognition that alter ego and single employer operations of signatory employers are subject to the parties collective-bargaining agreement. The Respondent points out that the Board has held that information requested by a union of an employer concerning the existence of a "double breasted" or alter-ego operation falls into the category of information that is not presumptively relevant. *Pence Construction Corp.*, 281 NLRB 322, 324–325 (1986). I find that the party's contract demonstrates that the Union's information request is presumptively relevant. I further find that the Union has, independent of the contract, established that the requested information was relevant to the Union's contract administration, potential grievance handling, and collective-bargaining functions. *Associated General Contractors*, 633 F.2d 766 (9th Cir. 1980).

In sum, in light of all the above, I find that the Union's information request concerned relevant and necessary information and that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide the requested information. *Shoppers Food Warehouse*, 315 NLRB 258, 259–260 (1994); *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988).

B. Respondent's Additional Defenses

1. Laches

The Respondent argues that because Access has been in existence since 1979, the Union knew of the potential need for the information that it now seeks. The Respondent asserts that the doctrine of estoppel and/or laches should apply in denying the Union's allegedly belated claim for the information. The point of this argument is that the Union should have asserted any claim to work or other relationship that Access was doing many years ago. I find that the Union did not waive its right to relevant information simply because it knew that the Respondent has been in business for several years. The Union is entitled to police and enforce its current collective-bargaining agreement and to ascertain the potential application it may have regarding Access. I, therefore, find that the doctrines of estoppel and laches are not applicable to deny the Union's request for information.

2. One-man unit

The Respondent argues that it has no duty to bargain with the Union because the represented unit became inappropriate after the sale of Respondent's assets to Otis. This assessment is based on the fact that of the present three employees, two are sons of one owner, and the third employee is a brother of the other owner. The Respondent points out that the Board will not require bargaining where the unit consists of one employee. Nor will it include supervisors or immediate relatives of owners in a bargaining unit. The Respondent also asserts that Bernard Buscher works alone and is thus a supervisor, and even if he is not so found, then the unit is only a one-man unit and not appropriate for bargaining. *Stack Electric*, 290 NLRB 575, 577 (1988); *D & B Masonry*, 275 NLRB 1403 (1985); NLRB Section 2(3) and (11). I find that this argument is premature. A principal aim of the Union's request for the information is to discover whether Access' work and employees are subject to the collective-bargaining agreement. The answer to that question would have an influence on whether the unit meets the Board's standards should the Respondent choose to challenge its appropriateness. I find that the Respondent's argument concerning the appropriateness of the unit is not a defense to its failure to provide the information. *Jervis B. Webb Co.*, 302 NLRB 316, 317 (1991).

3. Relevancy

Finally, the Respondent argues that certain of the Union's information requests are not relevant to its inquiry into the relationship between the Respondent and Access. More specifically questions 2, 6, 7, 8, and 9 are challenged as inappropriate. An examination of these inquiries shows they are designed to lead to information that may help determine the exact relationship between Access and the Respondent. *Shoppers Food Warehouse*, supra. I find that the questions are relevant and that information shall be produced along with the remainder of the information sought.³

³ The Respondent has also asserted that the case should be analyzed using successorship cases, and the conclusion reached that the business has changed to such a degree that the unit is no longer appropriate. See,

CONCLUSIONS OF LAW

1. CEC, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Union of Elevator Constructors, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (5) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, CEC, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Union of Elevator Constructors, AFL-CIO by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its functions as the exclusive bargaining representative of employees of the appropriate unit. The unit is:

All elevator constructor mechanics and elevator helpers employed by Respondent engaged in the installation, repair, modernization, maintenance, and servicing of all equipment referred to in Article IV and Article IV (A) of the collective-bargaining agreement between the Union and the National Elevator Industry that is in effect from July 9, 1997 to July 8 2002.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information it requested on August 14, 2000.

(b) Within 14 days after service by the Region, post at its facility in Omaha, Nebraska, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60

e.g., *Trident Seafoods, Inc.*, 318 NLRB 738 (1995); *Lauer's Furniture Stores*, 246 NLRB 360 (1979). I find that the cases cited by the Respondent for this proposition do not support that argument.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current em-

ployees and former employees employed by the Respondent at any time since August 14, 2000. *Excel Container, Inc.*, 325 NLRB 17 (1997).

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.